

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RANDY AUSBORN,
Plaintiff,
v.
KERN COUNTY SHERIFF DEPT., et al.,
Defendant.

Case No.: 1:22-cv-00210-SKO (PC)

**ORDER REGARDING PLAINTIFF'S
PENDING APPLICATIONS FOR LEAVE
TO PROCEED IN FORMA PAUPERIS**

(Docs. 11, 16, 17)

Plaintiff Randy Ausborn initiated this action on February 18, 2022, appearing *pro se*.
(Doc. 1.)

I. RELEVANT PROCEDURAL BACKGROUND

On February 23, 2022, the Court issued an Order Striking Unsigned Complaint and Requesting Plaintiff to File a Signed Complaint, and Order to Submit Prisoner Application to Proceed *In Forma Pauperis* or Pay Filing Fee. (Doc. 3.) Plaintiff was ordered to complete, sign, and submit an application to proceed *in forma pauperis* (IFP) pursuant to 28 U.S.C. § 1915. (*Id.* at 1.) Plaintiff was also advised that his complaint did not contain a signature. The February 18, 2022, complaint was stricken, and Plaintiff was ordered to file a properly completed and signed complaint. (*Id.* at 1-2.) Plaintiff was provided with both the IFP application form and a complaint form. (*Id.* at 2.) Plaintiff was given 45 days within which to file his completed IFP application and his signed complaint. (*Id.* at 2.)

1 On March 16, 2022, Plaintiff filed a First Amended Complaint, (Doc. 10), and also
2 submitted an Application to Proceed In Forma Pauperis by a Prisoner (Doc. 11).

3 On March 17, 2022, the Court issued its Order to Submit Inmate Trust Statement,
4 providing Plaintiff with 30 days within which to provide an inmate trust statement. (Doc. 12.) The
5 Court also issued its Order Regarding Plaintiff's Miscellaneous Requests on March 17, 2022.
6 (Doc. 13.)

7 On April 4, 2022, Plaintiff submitted a Second Amended Complaint, (Doc. 15), and two
8 separate Applications to Proceed In Forma Pauperis. (*See* Docs. 16 & 17.) Plaintiff has not
9 submitted an inmate trust statement.

10 The Court hereby clarifies for Plaintiff what must be submitted for the Court to consider
11 his requests to proceed IFP.

12 **II. DISCUSSION**

13 **A. Applications to Proceed IFP**

14 Pending before the Court are three separate IFP applications. None of the three IFP
15 applications is properly completed, and therefore, the Court remains unable to make a
16 determination concerning Plaintiff's requests to proceed IFP.

17 In his first IFP application, Plaintiff stated, among other things, that he had a total of "49"
18 – it is unclear whether the reference is to dollars or cents – in cash. (Doc. 11 at 2.) The application
19 is dated and signed March 8, 2022. (*Id.*) The portion below Plaintiff's signature is blank, and
20 therefore, incomplete. (*Id.*)

21 In his second IFP application, Plaintiff stated he had no cash. (Doc. 16 at 2.) The
22 application is dated and signed February 28, 2022 (*id.*), and was filed on April 4, 2022. In the
23 portion below Plaintiff's signature, titled "**CERTIFICATION BELOW IS TO BE**
24 **COMPLETED BY NON-CDCR INCARCERATED PRISONERS ONLY**" and

25 **"CERTIFICATE** (To be completed by the institution of incarceration)," it appears Plaintiff
26 entered the numerals "49" and other illegible numerals in the blank line that follows. Although an
27 illegible signature appears on the signature line, it appears to be in Plaintiff's handwriting and
28 was not completed by any authorized officer of the Lerdo Justice Facility where Plaintiff is

1 presently incarcerated. This application is therefore improper.

2 In his third IFP application, Plaintiff again stated he has no cash. (Doc. 17 at 2.) This
3 application is also dated and signed February 28, 2022 (*id.*), but was filed on April 4, 2022. The
4 portion below Plaintiff's signature is blank, and therefore, incomplete. (*Id.*)

5 **B. A Proper Submission is Required**

6 Plaintiff's first and third IFP application are incomplete because the bottom portion of
7 page two is blank and provides no information concerning Plaintiff's assets. Plaintiff's second
8 IFP application is inaccurate and was not completed by an authorized officer of the facility where
9 he is incarcerated. None of the pending IFP applications assist the Court with making its
10 determination whether Plaintiff should proceed IFP.

11 Plaintiff will be given ***one final opportunity*** to submit a single, properly completed IFP
12 application. The first page and top portion of the second page shall be completed and signed by
13 Plaintiff. The bottom portion of the second page ***must be completed and signed by an authorized***
14 ***officer*** of the Lerdo Justice Facility. Alternatively, Plaintiff may complete the first page and top
15 portion of the second page and provide a separate inmate trust statement—obtained from and
16 completed by an appropriate official at his place of incarceration—with his application. Plaintiff
17 shall be provided until Friday, May 27, 2022, to file a properly completed IFP application with
18 the Court. Should Plaintiff fail to do so, he is advised the undersigned will recommend this action
19 be dismissed for Plaintiff's failure to follow court orders.

20 **III. CONCLUSION AND ORDER**

21 For the reasons stated above, **IT IS HEREBY ORDERED** that:

22 1. **No later than Friday, May 27, 2022**, Plaintiff shall file a single, properly completed
23 IFP application with the Court, as explained above; and
24 2. The Clerk of the Court is directed to provide Plaintiff with a blank Application to
25 Proceed In Forma Pauperis by a Prisoner form.

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Plaintiff is warned that the failure to comply with this order will result in a recommendation that this action be dismissed.

IT IS SO ORDERED.

Dated: April 25, 2022

/s/ Sheila K. Oberto

UNITED STATES MAGISTRATE JUDGE